

REMARKS

The objection to the Specification in paragraph 3 of the Office Action has been noted and addressed. Likewise, the objection to the amendment with regard to Page 1, lines 15-20 and at Page 2, line 2 and 3, have been addressed. Applicant does not understand, however, the objection to the Abstract because the word "that" is not in the last line. Nor does applicant understand what the Office Action is referring to at paragraph 2 in noting that "It is unknown whether soils can have different land drainage." Clarification is requested.

The rejection of Claim 6 under 35 USC § 112, ¶ 1, is deemed moot in light of the foregoing amendment to Claim 6.

The rejection of Claims 1 and 3-6 under 35 USC § 112, ¶ 2, is traversed, and reconsideration of that rejection is requested.

Applicant has amended the claims, keeping in mind, on one hand, the various points raised in the Office Action and, on the other hand, that the Specification and claims are directed to one of ordinary skill in the art. Applicant finds nothing indefinite or confusing about the proposition that it is defining the capsule in terms of being a pyrometric capsule of porous porcelain, notwithstanding the fact that it may not measure temperature. Applicant has attempted to define the capsule in terms which allows one of ordinary skill in the art to understand the basic construction of the capsule.

Applicant has included the suggestions made in paragraph 9 of the Office Action in the amendments to Claim 1. Applicant cannot agree, however, that

Claims 3-5 are indefinite, at least in light of the amendments thereto, or that they fail to comply with 35 USC § 101. Applicant has adopted the suggestion made in paragraph 11 of the Office Action. Applicant cannot understand the question raised in paragraph 12 with regard to polluting effluents and phytosanitary compounds. To the extent that the question regarding polluting effluents arises from the term "such as", applicant has made it clear that the claimed term is more inclusive. With regard to phytosanitary, applicant notes that this term is used widely in the agricultural industry, perhaps more widely outside the United States. Applicant attaches hereto, however, a printout from the U.S. Department of Agriculture's Risk Management Agency, which refers to phytosanitary in terms of agricultural products. Another printout as a result of a Google™ search shows that the inorganic conditioner ITAFERTIL is used in plants for generating phytosanitary resistance. "Fitosanitary" appears to be the spelling used primarily outside the U.S. Thus, it is believed that the term and such compounds are well known in the industry as evidenced by U.S. Patent 6,037,311 (see the attached front page and the printout of other patents using that term).

With regard to the rejection of Claim 1 in paragraph 13 of the Office Action, the undersigned submits that there is no such rejection as "omitting essential elements." What is or is not an essential element is defined solely by the prior art. Applicant is required to cite only that which is sufficient to define

the invention. That said, however, Claim 1 has been rewritten to more positively recite the pipe.

With regard to paragraphs 14 and 15 of the Office Action, applicant has amended Claim 6 to address the issues raised by the Examiner. In connection with paragraph 15, however, applicant believes that the Examiner is referring to Claim 5, not Claim 6. Applicant submits that Claim 5 is clear as to what it covers in referring to at least one of solids and liquids.

In sum, applicant submits that the claims, as presently written, comply with 35 USC § 101 and 35 USC §112, ¶¶ 1 and 2.

The rejections of Claims 1 and 3-5 as being unpatentable over Faybishenko in view of Roberts “and/or” JP ‘731 “and/or” Tal and Handley et al. “and/or” Blanchard et al. “and/or” Hubbell et al., of Claims 1 and 3-5 as being unpatentable over Roberts in view of Handley et al. “and/or” Blanchard et al. “and/or” Hubbell et al., and of Claim 6 as being unpatentable over Roberts in view of Handley et al. “and/or” Blanchard et al. “and/or” Hubbell et al. and Timmons “and/or” Shields et al., all under 35 USC § 103(a), are traversed. Reconsideration of each of these rejections is respectfully requested.

Initially, applicant would note that the scope of the rejections is not entirely clear due to the multiple use of “and/or” in combining the references. That is, the three rejections appear to constitute many separate rejections when all the combinations and permutations are sorted out. This is clearly not conducive to streamlined prosecution and issue narrowing.

The extensive use of the secondary references in multiple combinations is almost conclusive proof that hindsight has been employed whereby the applicant's own disclosure has been used against him. The Office Action merely cites different types of probes which bear little relationship to one another. For example, probes that penetrate the substrate and protect an interior device are combined with others that are used for measurement of the soil moisture content at a given point, while still others measure hydraulic gradient or take continuous soil samples with regard to solutions and gases. Still others use vacuum pumps to perform sampling. There is no coherent teaching in any of these devices that would suggest their combination so as to produce a probe or device for extraction like that claimed in the present application which takes soil sample from substrates at different depths, analyzes these samples to interpret the ion dynamics in the profile, the penetration of the given phytosanitary compound or the mobility of a heavy metal. The only thing that the citation of these several references does show, however, is that the level of skill in the art was one that would have allowed the person of ordinary skill to make and use the present invention based upon the teachings set forth in the present application.

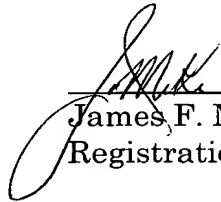
Accordingly, an early and favorable action on this case is earnestly solicited.

If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #2374/49228).

Respectfully submitted,

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